

Assembly Bill No. 1132

CHAPTER 43

An act to amend Section 1005 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor June 28, 1999. Filed with
Secretary of State June 28, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1132, Ackerman. Civil actions: noticed motions.

Existing law provides that all moving and supporting papers in a civil action are generally required to be served and filed at least 15 calendar days before the time appointed for the hearing, all papers opposing a motion are required to be filed with the court and served on each party at least five court days before the time appointed for the hearing, and all reply papers are to be filed with the court and served on the parties at least two court days before the hearing. Existing law provides, however, that if the notice is served by mail in this state, the required 15-day period of notice is increased by 5 days, and if the notice is served by mail out of state or outside of the United States, the required 15-day period of notice is extended by 10 and 20 days, respectively. Existing law also provides that if the notice is served by facsimile transmission or a method of overnight delivery, the 15-day period of notice is increased by 2 court days.

This bill would revise these provisions by requiring a party to serve and file all moving and supporting papers at least 21 calendar days before the hearing, would provide that all papers opposing a motion are to be filed and served at least 10 calendar days before the hearing, and would provide that all reply papers are to be filed and served at least 5 calendar days before the hearing, as specified. The bill would also revise the above described provisions regarding the extension of time for service of notice by mail, facsimile, or overnight delivery by providing that the specified days of extension are calendar days.

The people of the State of California do enact as follows:

SECTION 1. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivision (b), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 21 calendar days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 21-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 21-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least 10 calendar days, and all reply papers at least five calendar days before the hearing. Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means



consistent with the provisions of Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed.

The court, or a judge thereof, may prescribe a shorter time.

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